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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,179	12/10/2003	Bull Lau	P/3987-49	8040
2352	7590	05/01/2006	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/733,179	LAU, BULL	
	Examiner Gloria Hale	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-34 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. ____ .   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: ____ .                                   |

## **DETAILED ACTION**

### ***Specification***

The abstract of the disclosure is objected to because in line 2 "moulded" should read – molded -- . Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: throughout the specification "moulded" should read -- molded- -; utilizing" should read - -utilizing - - , "mouldable" should read -- moldable - - , "moulded" should read -- molded - - , "moulding" should read -- molding - - , "mould" should read -- mold - - , "moulds" should read - -molds - - and maneuvered is mis-spelled and not in American English..

Appropriate correction is required.

The use of the trademark LYCRA has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology, spandex.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Objections***

The claims as indicated are objected to because of the following informalities:

In claim 1, line 3, "moulded" should read --molded -- , in claim 26, line 3, claim 27, line 3 and claim 28, lines 2 and 4,"moulded" should read --molded - - . In claim 32, line 2 it appears that "perform" should read -- preformed - - ; in claim 34, line 2 "moulding" should read -- molding - -; in claim 34, line 1, "moulded" should read --

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molded -- , in line 2, "perform" should read - -preform -- and in line 3, "moulding" should read - - molding -- , In claim 1, line 4 at the end of the sentence a semicolon is needed.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 4 there is no antecedent basis for "the convex side". In line 5, "the concave and convex sides" needs the proper antecedent basis. In line 7 there is no antecedent basis for "the neckline perimeter".

In claim 2, line 2 is unclear. After "along to" it appears that language is missing. There is no antecedent basis for "the entire neckline perimeter". In claims 4 and 5, line 3 there is no antecedent basis for "the neckline perimeter disposed perimeter". The language is also unclear and confusing. In claim 5, line 4 there is no antecedent basis for "the transition". In claim 6, line 1 "said transition" and in line 2 "the thinnest part" and "said neckline".

In claim 6, line 1 there is no antecedent basis for "said transition" and in line 2 "the thinnest part" and "said neckline". In claim 7, line 1 there is no antecedent basis for "said transition". In line 2 before "region" it appears that language is missing. There is no antecedent basis for "the thinnest part" or "said neckline perimeter". In claim 7, line 8

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there is no antecedent basis for "the neckline perimeter". In claim 8, line 3 there is no antecedent basis for "the neckline perimeter disposed perimeter".

In claim 10, line 2; claim 12, line 2; claim 16, line 2 and claim 18, line 2 there is no antecedent basis for "said concave". Additionally in claim 21, line 2 there is no antecedent basis for "the concave side". In claim 11, line 2; claim 12, line 2; claim 17, line 2; claim 18, line 2 there is no antecedent basis for "the convex side". In claim 13, line 2 "said neckline", claim 14, line 2 and claim 15, line 2 there is no antecedent basis for "the base perimeter". In claim 20, line 2 "after "in" insert - - a - - . In claim 21, line 3 there is no antecedent basis for "the to be upwardly supportive region" which is also unclear..

In claim 23, line 2; claim 26, line 4 and line 5; claim 27, line 5 there is no antecedent basis for "the concave". In claim 26, line 5 there is no antecedent basis for "the convex" and in line 6'The neckline". In claim 27, lines 4 and 5 there is no antecedent basis for " the convex" and in line 6, "said exterior ply" and inline 7, "the neckline". In claim 28, line 3 there is no antecedent basis for "the convex". In claim 29, line 1 there is no antecedent basis for "said neckline " and line 2 should end with a period(.) and not a comma. Claim 31, line 2 is unclear. It appears that in claims 32 and 34, line 2 "perform" should read "perform". In claim 34, line 2 "the region" and "the neckline" has no antecedent basis. All of the claims should be reviewed to ensure that each term has the proper antecedent basis and is clear and concise.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-34 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-25 of copending Application No. 11/169,046 and claims 1-15 of Application Serial Number 10/987,818. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims claim the same method of making a molded pad with the folded over fabric about the pad perimeter, the pad construction itself and the pad within a garment..

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-34 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-33 and 36-69 of U.S. Patent Application No. 10/860,102 now allowed. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims claim the same method of making a molded pad with the folded over fabric about the pad perimeter, the pad construction itself and the pad within a garment..

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale  
Primary Examiner  
Art Unit 3765

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